IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

CRP.No. 586 of 2000(G)

SM-B6.28079/1987 OF TALUK LAND BOARD, CHIRAYINKIL

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REVN. PETITIONERS/LEGAL HEIRS OF DECLARANT:

1. G.SATHYA BHAMA, PLANKALA VEEDU,NPOYKAMUKKU, AVANAVANCHERI.

2. G.SAVITHRI, ROHINI BHAVAN, MUDAKKAL P.O., AVANAVANCHERI.

3. G.SATHYADAS PANICKER, J.J.NIVAS, POYKAMUKKU, -DO-

4. G.SADASIVA PANICKER, T.C.2/2321, PATTOM.P.O. T.V.PURAM.

5. G.SAHADEVA PANICKER, U.S.NIVAS, POYKAMUKKU, AVANAVANCHERI.

6. G.SATHYA NARAYANA PANICKER, GOPAL NIVAS, -DO- -DO-

7. G.SAROJINI, KOKULAM, MADATHUVILA, VARKALA.

8. G.SADANANDAN, KADAYARA, ERANJIPALAM, KOZHIKODE.

9. G.SATHEEMONI, SONA LAND, KARICHAYIL, ATTINGAL, T.V.P.M.

10. G.SARASWATHY, PLANKALA VEEDU, POYKAMUKKU, AVANAVANCHERI.

11. G.SAJEEVAN, THANKA NIVAS, -DO- -DO-

12. G.SATHYA RAJAN, KADAYARA, MUDAKKAL, -DO- -DO-

BY ADV. SRI.L.MOHANAN
SRI.D.SAJEEV
SMT.LIGEY ANTONY

RESPONDENTS/RESPONDENTS:

1. THE GOVERNMENT OF KERALA, REPRESENTED BY CHIEF SECRETARY, GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

2. THE TALUK LAND BOARD, CHIRAYINKIL, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI THOMAS JOHN AMBOOKEN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 13/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R.RAMAN J.

C.R.P.No.586 OF 2000

Dated this the 13th day of July, 2007

O R D E R

This revision is filed against the order of the Taluk Land Board in Ceiling Case No.SM-B6/28079/87 dated 18/1/2000. As per the order impugned in this revision, the declarant was required to surrender an extent of 70 cents and 875 sq. links from different survey numbers after holding that so much is the extent of the land held by the petitioner after the appointed day in excess of the ceiling limit. From the proceedings of the Taluk Land Board, it is evident that as per the earlier proceedings dated 30/8/1984 the Taluk Land Board ordered to surrender an extent of 4.33.400 acres of land as excess land owned by Sri Krishnan Gopalan. While proceeding to take possession of the land ordered to be surrendered, certain third parties preferred claim petition before the Taluk Land Board contending that the land sought to be taken possession of is owned or held by them and not liable to be included in the ceiling case of the declarant. After getting a report and a prima facie case, the Taluk Land Board stayed the proceedings for taking possession and the matter was heard and as per the proceedings dated 7/3/1985 decided that the declarant is liable to

surrender only an extent of 3.60.150 acres. Subsequently, based on a report from the Authorised Officer dated 28/11/1988 it was noticed that an extent of 70.875 cents of land was not included in the declarant's account and it is liable to be included for the purpose of determining the ceiling limit. Accordingly, after obtaining sanction from the Land Board, proceedings were initiated after issuing notice. In the meantime, the declarant died and hence his legal heirs filed their objections. The objection was mainly against the extent of the land liable to be exempted. That was allowed. Yet another contention was that the total land acquired by the family of the declarant after 1/1/1970 is 64 cents and after verification of the report of the Authorised Officer, it was found that an extent of 70.875 cents of land has been acquired by the declarant after 1/1/1970 and hence his objection was rejected. Yet another contention was as against standardisation. It was found on verification that among the land shown as wrong classification by the declarant in his objection petition, the lands in Sy.No.907 and 902 alone are subject to the consideration of the present ceiling case initiated under Section 85(1) of the K.L.R. Act and other survey numbers relate to the land acquired prior to 1/1/1970. Therefore, the question of standardisation in

respect of the lands acquired prior to 1/1/1970 has already been examined in the earlier orders of the Taluk Land Board and regarding the standardisation of lands acquired after 1/1/70 it was found that the question of standardisation did not arise since the lands acquired after 1/1/70 are liable to be surrendered. It was accordingly found that an extent of 0.70.875 acres of land is liable to be surrendered by the petitioner. It is this order that is impugned in this revision.

2. As regards the various contentions considered by the Taluk Land Board with respect to land owned or possessed by the declarant prior to 1/1/70, there was no argument against those findings. If the lands were acquired after 1/1/70 and the petitioner was already held to be in possession of the excess land in the earlier order, whatever those acquired subsequently necessarily will be excess over the ceiling limit and hence the question of standardisation did not arise as rightly found by the Taluk Land Board. As regards the actual extent acquired, the burden is on the petitioner to prove that the actual extent is less than what has been taken into account. The petitioner was not able to substantiate his contention.

3. Learned counsel appearing on behalf of the petitioner however

submitted that the present order of the Taluk Land Board, after the completion of the earlier proceedings, is not sanctioned by law since according to him, as on the date of which notice was issued, the law as stood then only permitted reopening of the case under Section 85(9) within a period of three years from the date of the order. In this connection he would submit that the notice in this case was issued on 12/1/1989 on which day the law as stood then only permitted reopening of the case within a period of three years from the completion of the earlier proceedings. However, it is not disputed that Section 85(9) was subsequently amended raising the period of limitation to seven years with effect from 30/5/1989. As a matter of fact, the proceedings were completed only as per the impugned order dated 18/1/2000. Objections were filed by the petitioner on 7/8/1992. There was no objection made by the petitioner raising any such contention as is now raised. Further as on the date of which the order was passed, the period of limitation is seven years. Admittedly, the order was passed within the period of seven years and therefore this objection also cannot be sustained.

4. It is then contended that it is only after setting aside the earlier

order that the present order could have been passed. As far as the earlier order is concerned, admittedly the petitioner was found liable to surrender excess land against which he did not prefer any revision to this Court. Therefore, it is the admitted position that he had the excess land to be surrendered. Therefore, all that is required to be done is to find out whether any land which is acquired after 1/1/70 has been left out from consideration. No prejudice whatsoever has been caused to the petitioner. Further this is also not an objection raised before the Taluk Land Board.

5. As a matter of fact, as rightly pointed out by the learned counsel for the petitioner that this is an acquisition after 1/1/70 and Section 85 is applied including the proviso prescribing the period of limitation. As per Section 87of the K.L.R. Act, any acquisition made after the appointed day, namely, 1/1/1970 by gift, purchase or otherwise by which the total extent of the land exceeds the ceiling area, such excess shall be surrendered to such authority as may be prescribed. There is no period of limitation as such prescribed under Section 87. The mere fact that in the notice issued, a wrong section is quoted, is not very material, if it is shown that the Government has the power under Section 87 to take the excess land

acquired after 1/1/1970. As already stated earlier, even this objection was not raised before the Taluk Land Board.

In the above circumstances, I find no merit in this revision. It is accordingly dismissed.

P.R.RAMAN,
Judge.

kcv.